

DANIEL J. BRODERICK, Bar #89424  
Federal Defender  
MATTHEW C. BOCKMON, Bar #161566  
Assistant Federal Defender  
Designated Counsel for Service  
801 I Street, 3rd Floor  
Sacramento, California 95814  
Telephone: (916) 498-5700

Attorney for Defendant  
DAVID GUIDRY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) No. CR-S-00-427 LKK  
Plaintiff, ) No. CR-S-01-027 LKK  
)  
v. ) **ORDER RE**  
DAVID GUIDRY, ) **REQUEST FOR HEARING REGARDING**  
Defendant. ) **STATUS OF MOTION FOR DISCHARGE OR**  
 ) **CONDITIONAL RELEASE HEARING**  
 )  
 ) Date: October 6, 2009  
 ) Time: 9:15 a.m.  
 ) Judge: Hon. Lawrence K. Karlton

TO THE HONORABLE LAWRENCE K. KARLTON AND THE PARTIES HERETO:

David Guidry moves pursuant to 18 U.S.C. section 4247(h) for an Order of Discharge or Conditional Release. He also moves for his immediate release because this Court expressly limited any recommitment for hospitalization on a Not Guilty By Reason of Insanity verdict to a period of time Mr. Guidry has already served. This Motion is supported by the following Memorandum of Points and Authorities.

## Background

On December 5, 1997, in U.S. District Court of Oregon, Mr. Guidry was found not guilty by reason of insanity for the charge of attempted rape. Mr. Guidry was subsequently committed to the custody of the Attorney General for hospitalization until such time as the director of

1 the facility in which he was hospitalized determined that he had  
2 recovered from his mental disease and defect to such extent that his  
3 release under a prescribed regimen of medical, psychiatric, or  
4 psychological care or treatment, would no longer create a substantial  
5 risk of bodily injury to another person or serious damage to the  
6 property of another.

7 Mr. Guidry was released on August 10, 2000. Within two weeks, he  
8 committed a bank robbery in the Eastern District of California for  
9 which this Court sentenced him to 96 months. Evidently, this Court  
10 also imposed judgment in the District of Oregon case as if it were a  
11 related supervised release violation.

12 Following imposition of the 96 month sentence, the following  
13 occurred in open court as set forth in the attached transcript.  
14 (Exhibit A).

15 THE COURT: (Honorable Lawrence K. Karlton) Defendant is  
16 remanded to the custody of the marshal.

17 MR. TISE-RASKIN: Your Honor, there is one additional matter,  
18 if I may?

19 There is the pronouncement of the judgment in connection with  
20 the companion case for violation of the petition.

21 THE COURT: Court finds that the defendant violated and is  
22 sentenced to whatever the maximum is to run concurrent.

23 THE DEFENDANT: Thank you very much.

24 MR. TICE-RASKIN: Thank you, your Honor.

25 MR. REICHEL: Your Honor, before I finish though, the Court  
26 said whatever the maximum may be to run concurrent. The  
27 maximum, that's my concern.

28 THE COURT: Oh, if the maximum exceeds - it is 96 months.

1 MR. REICHEL: Thank you, your Honor.

2 RT 4/23/2002, pp. 8:5 - 9:14.

3

4 "He was then recommitted under Title 18, U.S.C., Section  
5 4243(e), to MCFP in Springfield, Missouri on October 8,  
6 2002."

7 See Risk Assessment Review Report p.1, February 25, 2009  
(Exhibit B).

8 After completing his bank robbery sentence,

9

10 Mr. Guidry was particularly preoccupied  
11 with his commitment, insisting that his  
12 sentence had expired and that he was  
13 supposed to be released. Although it was  
explained to him on multiple occasions  
that he was committed under 18 U.S.C.  
4243, Mr. Guidry did not appear to  
understand.

14 \*\*\*\*

15 Ultimately, his agitation led to his  
16 placement in the locked mental health  
17 unit, where he was heard angrily ranting  
18 about members of the Risk Assessment  
Panel, who he accused of "fucking with my  
release date."

19 Id. p.3.

20 The February 25, 2009, Risk Assessment Review Report recommends to  
21 this Court that the patient [Mr. Guidry] continue to be committed under  
22 18 U.S.C. 4243(e). Id. p.6.

23 **Discussion**

24 Mr. Guidry has a statutory right, under 18 U.S.C. § 4247(h), for a  
25 discharge hearing. Section 4247(h) provides that "counsel for the  
26 [hospitalized] person or his legal guardian may, at any time during  
27 such person's hospitalization, file with the Court that ordered that  
28 commitment a motion for a hearing to determine whether the person

1 should be discharged from such facility. . ." United States v. Budell,  
2 187 F.3d 1137 (9<sup>th</sup> Cir. 1999).

3 Mr. Guidry hereby requests a discharge hearing before this Court  
4 as soon as possible. Mr. Guidry further requests clarification of this  
5 Court's judgment running his bank robbery sentence and recommitment  
6 concurrently.

7 **Conclusion**

8 Mr. Guidry's Motion for Discharge or Conditional Release Hearing  
9 should be granted.

10 WHEREFORE, defendant prays for his discharge from the custody of  
11 the Attorney General and for such other relief to which he may be  
12 entitled.

13 Dated: August 31, 2009

Respectfully submitted,

14 DANIEL J. BRODERICK  
Federal Defender

15 /s/ *Matthew C. Bockmon*

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16 MATTHEW C. BOCKMON  
17 Assistant Federal Defender  
18 Attorney for Defendant  
DAVID GUIDRY

20 **O R D E R**

21 IT IS HEREBY ORDERED that Defendant David Guidry, Register No.  
22 85957-011, be brought before this court on whether or not he should  
23 continue to be held by the Attorney General of the United States or  
24 whether Defendant Guidry should be discharged or granted conditional  
25 release.

26 Dated: September 2, 2009

  
27 LAWRENCE K. KARLTON  
SENIOR JUDGE  
28 UNITED STATES DISTRICT COURT

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Federal Defender for the Eastern District of California and am a person of such age and discretion as to be competent to serve papers. On **August 31, 2009**, I served a true and correct copy of the attached:

***Request for Hearing Regarding Status of Motion for Discharge or  
Conditional Release Hearing*** by depositing a true copy thereof enclosed  
in a sealed envelope with postage thereon fully prepaid in the United  
States mail, at Sacramento, California, addressed as follows:

MCFP Springfield  
Director  
Medical Center/Federal Prisons  
P.O. Box 4000  
Springfield, MO 65801

I declare under penalty of perjury the foregoing is true and correct to the best of my knowledge. Executed this 31st day of August, 2009, Sacramento, California.

/s/ *Veronica Orozco*

Veronica Orozco  
Legal Secretary